

Case No. 14-cr-00412-TEH

## **ORDER RE: GOVERNMENT'S REQUEST FOR CLARIFICATION**

On August 17, 2015, the Government filed a request for clarification of the Court's August 11, 2015 Order on the parties' motions *in limine* (Docket No. 199). (Docket No. 203). The Court allowed Defendant to respond to the Government's request, which he did the next day. (Docket No. 206).

In the Court’s Order on the motions *in limine*, the Court provided: “evidence of Martin’s criminal history is admissible,” Order at 15, and “evidence of the 2014 break-in is inadmissible, except for the text message referencing the busted clip,” Order at 6. The Court believes that these determinations were sufficiently clear, and agrees with Defendant that the Government’s “request for clarification” appears to be a thinly veiled, out-of-order motion for reconsideration. Nonetheless, the Court now addresses the Government’s request for clarification below.

## **I. Evidence of Martin's Criminal History**

23       Regarding Martin’s criminal history, the Government contends that “the defendant  
24       should be limited to arguing that Martin had a prior felony conviction, and should be  
25       precluded from asserting that Martin was specifically convicted of a felony offense  
26       involving a firearm.” Request at 2. The Government’s argument mistakenly assumes that  
27       Defendant is only using Martin’s criminal history to suggest that Martin had a motive to  
28       hide a gun at 905 Missouri Street. However, the Court’s Order acknowledged that

1 Martin's criminal history was also admissible to support Defendant's theory that he was a  
2 viable suspect that the SFPD should have more thoroughly investigated. Order at 14.  
3 Because of this second purpose for introducing Martin's criminal history, the fact that  
4 Martin's conviction for a *firearm-related* offense is particularly relevant. Indeed, while the  
5 law does not allow propensity evidence to be admitted as evidence that an individual  
6 engaged in a certain act, it should be no surprise that the police look at a suspect's prior  
7 conduct when investigating them. Knowing that Martin had previously been convicted of  
8 a *firearm-related* offense, Defendant's theory argues, the SFPD should have given him a  
9 closer look when trying to determine who owned the recovered firearm. For the reasons  
10 already articulated in the Order on the motions *in limine*, the Court will allow Defendant to  
11 present this defense theory. Accordingly, the Court reasserts its ruling: evidence that  
12 Martin had been previously convicted of a firearm-related offense is admissible.

13 The Court's Order did not, however, address the admissibility of Martin's "rap  
14 sheet" or certified Superior Court documents. The Court clarifies that Defendant's "rap  
15 sheet" is admissible under the Court's Order, but only to the extent that it provides  
16 evidence of Defendant's conviction for a firearm-related offense and lists Martin's address  
17 as 905 Missouri Street.<sup>1</sup> In his response to the Government's request, Defendant states that  
18 he would "be amenable to the Court instructing the jury to disregard" portions of Martin's  
19 record that concern "other run-ins with the law." Out of an abundance of caution, and  
20 because Martin's other criminal history is both irrelevant and inappropriate, the Court  
21 ORDERS Defendant to appropriately redact Martin's rap sheet so that such evidence is not  
22 improperly presented to the jury. Similarly, certified Superior Court documents that  
23 establish Martin's firearm-related conviction are admissible under the Court's Order, but

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26 <sup>1</sup> The Court agrees with Defendant that the listed address is not hearsay as long as it is not  
27 being offered to prove that Martin lived at 905 Missouri Street. To the extent that the  
28 address is offered to suggest that it should have put the SFPD on notice that Martin had a  
connection to 905 Missouri Street, and was therefore a viable suspect that warranted  
further investigation, the Court finds that it is admissible.

1 must be redacted to prevent evidence of other criminal conduct.<sup>2</sup> The Court will address  
2 the admissibility of any other evidence regarding Martin's criminal history as it arises at  
3 trial.

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## 5 **II. Evidence from the 2014 Break-In**

6 Regarding evidence related to the 2014 break-in, the Government inquires whether  
7 it can introduce all of the evidence excluded by the Court's Order as long as it does not  
8 mention that a "break-in" occurred. Request at 2. As noted by Defendant, the  
9 Government's proposal does not strip the evidence of its prohibited Rule 404(b) nature.  
10 Resp. at 4. Evidence that Defendant left ammunition and a firearm magazine at 301  
11 Crescent Court, even absent a specific allegation that these items were left in the course of  
12 committing a burglary, is still evidence of a prohibited act that is inadmissible under Rule  
13 404(b). It is unlikely that a jury will infer that Defendant was carrying these firearm-  
14 related items for an innocuous purpose. Indeed, the very fact that a jury would be provided  
15 with all of this evidence - including cellphone tower evidence that places Defendant at 301  
16 Crescent Court on January 24, 2014, and testimony from B.F. that she knew Defendant and  
17 believes the firearm-related items were left at her house on January 24, 2014 - is likely to  
18 confuse the jury and make them wonder what the Court is hiding from them.

19 Moreover, removing a reference to the break-in does not cure the other major defect  
20 the Court identified with this evidence: the circular nature of the reasoning that makes it  
21 probative. As explained in the Court's Order, the Government's logic is: (1) the  
22 Government believes Defendant owned the firearm, (2) the firearm was used or otherwise  
23 present at 301 Crescent Court, (3) therefore, Defendant must have been at 301 Crescent  
24 Court, (4) which is proof that Defendant owned the firearm. Order at 5. The circular  
25 nature of this logic, even absent any mention of a break-in, still renders the evidence of

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<sup>2</sup> The certified Superior Court documents are admissible public records not excludable by the hearsay rule pursuant to Federal Rule of Evidence 803.

1 limited probative value while presenting a significant risk that it will confuse the issue at  
2 trial.

3 Finally, introduction of this evidence would still likely result in a mini-trial because  
4 Defendant would try to challenge the collection and processing of the break-in evidence,  
5 but would in fact now have to do so unable to provide any context for that challenge lest he  
6 prejudice himself. The Government's proposal attempts to resolve one of many problems  
7 the Court identified with the break-in evidence, but in doing so makes it even more  
8 difficult for Defendant to receive a fair trial.

9 Accordingly, the Court reiterates its determination that evidence related to the 2014  
10 break-in is inadmissible, except for the text messages allegedly sent by Defendant  
11 referencing a busted and/or missing clip for his PT 92 Taurus. Order at 6. Should the  
12 Government continue to have questions about the admissibility of specific pieces of  
13 evidence in light of the Court's Orders, it should address them to the Court at the close of  
14 proceedings the day before it will attempt to offer such evidence to the jury.

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16 **IT IS SO ORDERED.**

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18 Dated: 08/20/15

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21 THELTON E. HENDERSON  
22 United States District Judge  
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